IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

OP.No. 18162 of 1997(K)

PETITIONERS:

1. **C.V.JANAKIKUTTY , AGED 58 YEARS D/O.VENKATESWARA BHATT, RESIDING AT HAJA VIHAR, PATHAIKKARA, PERINTHALMANNA.**
2. **M.K.SUKUMARAN, AGED 53 YEARS, S/O.NARAYANAN NAIR, RESIDING AT MELAKULANGARA HOUSE, PERINTHALMANNA.**
3. **M.K.HASSAN, S/O.KUNHAYANKUTTY, RESIDING AT MANADAKIZHINIYIL HOUSE, KUNNAPPILLY.**
4. **P.RADHA, AGED 53 YEARS, W/O.K.P.KRISHNAN, RESIDING AT CHAITHANYA, ANGADIPURAM.**
5. **C.M.ABDULRAHIMAN, AGED 56 YEARS, S/O.MOHAMMED, RESIDING AT CHALLAPPURATH HOUSE, OOTY ROAD, PERINTHALMANNA.**
6. **C.A.HAMZA, AGED 55 YEARS, S/O.KUNHAYAMU, RESIDING AT THEKKATH HOUSE, HOSPITAL ROAD, PERINTHALMANNA.**

BY ADV. SRI.M.RAJAGOPALAN NAIR
SRI.P.M.PADMANABHAN
SRI.V.V.SURENDRAN

RESPONDENTS:

1. **REGISTRAR OF CO- OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.**
2. **JOINT REGISTRAR OF CO- OPERATIVE SOCIETIES, MALAPPURAM.**
3. **THE SECRETARY/ CHIEF EXECUTIVE, PERINTHALMANNA SERVICE CO- OPERATIVE BANK LTD., PERINTHALMANNA.**

BY GOVERNMENT PLEADER SRI.SURARSHAN
SRI.FIROZ K.ROBIN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/01/2007, ALONG WITH OP NO. 18178 OF 1997 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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O.P.Nos.18162 & 18178 of 1997

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Dated this the 5th day of January, 2007

J U D G M E N T

Seven employees of the third respondent society raised a claim before the 1st respondent regarding the change of D.A. pattern as per Government orders based on Rule 200 of the Kerala Co-operatives Societies Rules, 1969. Out of them, one, viz., P.K.Balachandran died. The others filed O.P.No.18162/1997 and the widow of the said P.K.Balachandran filed O.P.No.18178/1997 challenging the very same order of the Registrar of Co-operative Societies rejecting the claim raised by the employees. Since the claim in both these cases are identical, I shall refer to the pleadings and exhibits as obtaining in O.P.No.18612/1997.

2. The contentions of the petitioners in short are as follows:- The Board of management of the third respondent society adopted Ext.P1

resolution dated 24.10.1973 regarding the D.A. payable to the employees of the society. By Ext.P1 the management decided to give to the employees two types of D.A. One D.A. is calculated at the rate applicable to Kerala Government employees as on that date. The second was variable D.A. linked with the cost of living index as detailed in Ext.P1. With effect from 1.1.1974 the Government passed orders to make pay scales of employees of all co-operative societies in the State uniform as per which the employees were granted D.A. as applicable to the employees in Government service. The petitioners' contention in these original petitions is that in addition to that D.A., they would also be entitled to variable D.A. as provided by Ext.P1 resolution by virtue of Rule 200 of the Kerala Co-operative Societies Rules. The contention is that variable D.A. is a special privilege given to the petitioners prior to 1.1.1974 and therefore that is saved by Rule 200 and therefore, in addition to D.A. at the Government rates, the employees would

be entitled to variable D.A. as provided in Ext.P1.

3. The 2nd respondent has filed a counter affidavit. They would say that the Government framed Rules 182 to 201 under Section 80 of the Kerala Co-operative Society Act, 1969, with effect from 1.1.1974. As per Rule 182 the societies were classified as shown in appendix III and their staff pattern and pay scales were also approved. But the third respondent society did not implement the same right from 1.1.1974, but with effect from 1.1.80. They would submit that when pay revision was effected with effect from 1.4.1979, the third respondent society in violation of the Government orders, gave to the petitioners both D.A. on Government rates which was the D.A. pattern approved by the Rules and the variable D.A. which according to the third respondent, was not permitted by the Rules. They would submit that as held in the impugned orders, the D.A. introduced by the Government order was in lieu of total D.A. which was being paid to the employees of the

various co-operative societies and therefore, apart from the D.A. as provided by the Government order, the employees of any co-operative society shall not be entitled to any other D.A. in addition to that.

4. I have considered the rival contentions in detail.

5. Since the petitioners are relying on Rule 200 I shall extract the same for convenience. Rule 200 reads thus:

> "**200. Savings:-** Nothing in these rules as amended by the Kerala Co-operative Societies (Amendment) Rules, 1988 in G.O(MS).No.18/88/Co-op. dated the 17th day of June, 1988 or any rule made thereunder shall operate to debar from enjoyment by any person or employee of any privilege of emoluments or any right except age of retirement, to which he is entitled by the term or any contract or agreement or conditions of service subsisting between such person and a Co-operative Society as on the 1st January, 1974. Nothing in these rules as amended by the Kerala Co-operative Societies (Amendment) Rules, 1988 in G.O(MS) No.18/88 Co-op. dated the 17th day of June, 1988 shall be interpreted as disqualification for promotion to any higher post or posts to the employees in service of a Co-operative Society as on the 1st January, 1974, provided they possessed the qualifications, if any, prescribed in the bye-laws or other service regulations, of such society."

The petitioners would be entitled to the relief prayed for in these original petitions only if the variable D.A. as provided in Ext.P1 is a special

privilege of emoluments or any special right as mentioned in Rule 200. D.A. is a specific concept. Whether it is D.A. at Government rates or variable D.A., character is the same. Its character does not change. Only the method of computation changes. The Government by the Government order in question introduced uniform pay scales for all societies in Kerala, in which a specific D.A. Pattern, viz., as that applicable to Government servants in the State, has been adopted for the employees of all the Co-operative societies in Kerala. This actually replaces the D.A. pattern which individual co-operatives societies were adopting prior to the introduction of Government order and the Rules in question. Therefore, evidently, the D.A. pattern introduced by the Government order is in lieu of the D.A. pattern which the societies were following. Therefore, just because the third respondent society adopted for the petitioners a particular pattern of D.A. by which D.A. was calculated both as a fixed D.A. and as variable

D.A., the character of the D.A. does not change. When that is modified into the D.A. pattern as applicable to Government employees, unless of course the petitioners have got a case that as a result of that, the petitioners would be getting a lesser amount of D.A., than what whey were getting prior to 1.1.1974, I am of opinion that the petitioners cannot rely on Rule 200 to claim the variable D.A. in addition to the D.A. as provided by the Government orders. As I have held earlier, the concept of D.A. is the same whether it is given as fixed D.A. or variable D.A. When that fixed D.A. and variable D.A. has been converted into D.A. as applicable to Government servants in the State, I do not think that there is any taking away of the privilege of emoluments or any right which the petitioners were entitled to prior to the introduction of the uniformed pay scales with effect from 1.1.1974. Therefore, I am not satisfied that by converting D.A. plus variable D.A. which the petitioners were enjoying as per Ext.P1 prior

to 1.1.1974 into D.A. as applicable to Government employees, there is any violation of Rule 200. That being so, I do not find any merit in the contentions of the petitioners in these original petitions and accordingly the challenge against Ext.P11 fails and consequently the original petitions are dismissed.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.Nos.18162 &

18178 of 1997

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J U D G M E N T

5th January, 2007